

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter)	
)	
PAGING SYSTEMS, INC.)	File Nos. 0002925303, 0002925304
)	
Applications to Renew Licenses for Stations)	
WPKC922 and WPKC923)	

ORDER

Adopted: April 13, 2011

Released: April 14, 2011

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* Paging Systems, Inc. (PSI) filed the above-captioned applications to renew its licenses for Part 90 Commercial Industrial/Business (IK) Pool Stations WPKC922 and WPKC923, and requested waivers to permit late filing of the applications.¹ Warren C. Havens, AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation (Petitioners) filed a petition to deny the renewal applications.² For the reasons set forth below, we grant the waiver requests, deny the petition, and will process the applications.

2. *Background.* The licenses for Stations WPKC922 and WPKC923, each for three (different) locations in northern California, were granted to PSI's predecessor on January 23, 1997, with an expiration date of January 23, 2007. On October 30, 2006, a renewal reminder was sent to PSI. On January 16, 2007, PSI filed applications to modify the licenses by deleting one location from the license for Station WPKC922 and two locations from the license for Station WPKC923.³ On January 23, 2007, the licenses for Stations WPKC922 and WPKC923 expired by their own terms.

3. On February 22, 2007, PSI amended the modification applications to add an attachment requesting that the applications be treated as applications for renewal/ modification (RM), rather than applications only to modify the licenses (MD); it stated that it had intended to file RM applications, but inadvertently filed MD applications. PSI indicates that Commission staff then informed it that a MD application cannot be amended to request license renewal.⁴ On February 26, 2007, PSI filed the above-captioned applications to renew the licenses, and requested waivers to permit late filing of the applications.⁵ It requests waivers on the grounds that it timely filed what it intended to be RM

¹ See FCC File No. 0002925304, Request for Waiver (WPKC922); FCC File No 0002925303, Request for Waiver (WPKC923). The waiver requests are identical.

² Petition to Deny, or in the Alternative Section 1.41 Request (filed Apr. 6, 2007) (Petition to Deny). PSI filed an opposition. Opposition to Petition to Deny, or in the Alternative, Section 1.41 Request (filed Apr. 19, 2007). Petitioners filed a reply. Reply to Opposition to Petition to Deny, or in the Alternative, Section 1.41 Request (filed May 1, 2007). Petitioners also filed a supplemental pleading. Report under Section 1.65 (filed Feb. 22, 2011).

³ See FCC File Nos. 0002879164 (WPKC922), 0002879169 (WPKC923).

⁴ See Waiver Requests at 1.

⁵ Also on February 26, 2007, PSI applied for special temporary authority (STA) to operate two sites formerly authorized under the licenses for Stations WPKC922 and WPKC923. See FCC File Nos. 0002925891, 0002925984. The STAs were granted under Call Signs WQGL873 and WQGL874, and are scheduled to expire on June 20, 2011. We note that PSI is licensed to operate another IK station at the remaining WPKC922 location. See license for Call Sign WNGR945.

applications, but mistakenly classified them as MD applications.⁶

4. Section 1.949(a) of the Commission's Rules requires that applications for renewal of authorizations in the Wireless Radio Services be filed no later than the expiration date of the authorization.⁷ The Commission's policy regarding treatment of late-filed renewal applications in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc*⁸ if the application is otherwise sufficient under our rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.⁹ Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁰

5. *Discussion.* Most of Petitioners' arguments do not involve the instant applications; instead, Petitioners allege that PSI's conduct with respect to other licenses demonstrates that PSI lacks character and fitness to be a Commission licensee, and incorporate by reference arguments they raised in other proceedings involving other PSI licenses. The Commission has since held, however, that "Petitioners' allegations regarding PSI's character qualifications, which relate to other PSI licenses and are the subject of other pending proceedings, are more appropriately addressed elsewhere."¹¹ We therefore will not address those arguments in this proceeding.

6. The Commission will grant a waiver if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹² With respect to the merits of the waiver request, Petitioners argue that PSI has not shown sufficient cause to accept the renewal applications more than thirty days after the license expiration date, because "[i]t is not believable that PSI, represented by counsel, could have mistaken a modification application for a renewal application."¹³ We disagree, and find it plausible that PSI inadvertently checked the box for purpose code

⁶ See Waiver Requests at 1-2.

⁷ 47 C.F.R. § 1.949(a).

⁸ *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.*, with the same effect as if regularly done.

⁹ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485-86 ¶ 22 (1999).

¹⁰ See *id.*

¹¹ Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450, 454 ¶ 8 (2010), *recon pending*; see also Paging Systems, Inc., *Order on Reconsideration and Order*, 25 FCC Rcd 14620, 14621 n.14 (WTB MD 2010), *recon. and review pending*; Paging Systems, Inc., *Order on Reconsideration and Order*, 25 FCC Rcd 5762, 5763 ¶ 4 (WTB MD 2010) (2010 Division Order), *recon pending*; Paging Systems, Inc., *Memorandum Opinion and Order*, 22 FCC Rcd 1294, 1299-1300 ¶ 9 (WTB BD 2007), *recon. dismissed*, *Order on Reconsideration*, 23 FCC Rcd 7458 (WTB BD 2008), *review dismissed*, *Letter*, 24 FCC Rcd 13776 (WTB BD 2009), *recon. pending*.

¹² See 47 C.F.R. § 1.925(b)(3).

¹³ Petition to Deny at 6.

MD. Moreover, this Division's predecessor¹⁴ held that the filing of a timely but defective renewal application warranted a waiver to permit the late filing of a subsequent renewal application, where the licensee acted in good faith and moved promptly to file a proper renewal application after learning that the original attempt fell short.¹⁵ Consequently, we grant the waiver requests, deny the petition to deny, and will process the renewal applications.¹⁶

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925 the waiver requests filed by Paging Systems, Inc. in association with applications File Nos. 0002925303 and 0002925304, filed on February 26, 2007, ARE GRANTED.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and Sections 1.41 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.939, the Petition to Deny, or in the Alternative Section 1.41 Request filed by Warren C. Havens, AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation on April 6, 2007, IS DENIED, and applications File Nos. 0002925303 and 0002925304 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

9. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁴ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division (PSPWD) were assumed by the Public Safety and Critical Infrastructure Division (PSCID). See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003). Pursuant to a Commission reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

¹⁵ See City of Dardanelle Fire Department, *Order*, 17 FCC Rcd 10901, 10902 ¶ 4 (WTB PSPWD 2002) (citing Florida Power and Light Co., *Order*, 15 FCC Rcd 13607 (WTB PSPWD 2000)); KNTV License, Inc., *Order*, 16 FCC Rcd 20440, 20442-43 ¶¶ 6-7 (WTB PSPWD 2001) (citing Navopache Electric Cooperative, Inc., *Order*, 16 FCC Rcd 11870 (WTB PSPWD 2001)); City of Henderson, Nevada, *Order*, 14 FCC Rcd 16156, page ¶ 7 (WTB PSPWD 1999). (We decline to follow dicta in a subsequent PSPWD decision stating that the filing of a timely but defective renewal application does not constitute grounds for granting a waiver to permit the late filing of a subsequent renewal application. See Huntsman Corporation, *Order on Reconsideration*, 18 FCC Rcd 3814, 3816 n.24 (WTB PSPWD PRB 2003) (*Huntsman*). We note that the decision on which *Huntsman* relies – WLOS Licensee, Inc., *Order on Reconsideration*, 15 FCC Rcd 11047 (WTB PSPWD 2000) – is inapposite in that the defective filing in that case was filed after the license expiration date, and thus was not timely.)

¹⁶ Given our resolution of the petition, we need not address PSI's assertion that Petitioners lack standing to challenge the renewal applications. See 2010 Division Order, 25 FCC Rcd at 5763 n.14.